



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AR # _____

December 21, 2007

MEMORANDUM

TO: Thomasenia P. Duncan
General Counsel

THROUGH: Patrina M. Clark
Staff Director

FROM: Joseph F. Stoltz
Assistant Staff Director
Audit Division

Thomas Hintermister
Audit Manager

Bill Antosz
Lead Auditor

AUDIT REFERRAL # 08-01

SUBJECT: Citizens for Arlen Specter (A05-23) – Referral Matter

On December 7, 2007, the Commission approved the final audit report on Citizens for Arlen Specter. Finding 1- Receipt of Contributions that Exceed Limits (see attached) meets the criteria for referral to your office. Based on the documentation submitted, the committee received contributions from individuals that exceeded the limit by \$1,052,812 and contributions from political committees that exceeded the limit by \$21,850. The following chart summarizes the various situations applicable to the excessive amounts identified in the Audit Report.

Type of Excessive Contribution	Amount
Curable & cured late with presumptive letters	\$895,669
Untimely refunded in the Audit period ('03-'04)	\$12,250
Curable & untimely refunded after Interim Audit Report	\$13,510
Not Curable & untimely refunded after Interim Audit Report	\$12,841
Curable & not resolved	\$88,262
Not Curable & not resolved	\$30,280
Total Excessive Contributions from Individuals	\$1,052,812
Party Committee not refunded	\$10,350
Party Committee, untimely refunded	\$11,500
Total Excessive Contributions from Political Committees	\$21,850

All workpapers and related documentation are available for review. Should you have any questions regarding this matter, please contact Bill Antosz or Thomas Hintermister at 694-1200.

Attachments: Finding 1 – Receipt of Contributions that Exceeds Limits

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Finding 1. Receipt of Contributions That Exceed Limits

Summary

The audit disclosed that CFAS received excessive contributions from individuals and political committees, most caused by its failure to send individuals notification of election designation and contributor attribution. With respect to contributions from individuals, CFAS addressed the \$1,052,812 at issue by documenting untimely refunds of \$12,250 and, in response to the interim audit report, sending untimely redesignation or reattribution notices for contributions totaling \$895,669 and documenting additional untimely refunds of \$22,091. Contributions of \$133,152 remain unresolved. Included in this amount is \$4,260 that CFAS indicates has been refunded, but has not provided evidence that the refund checks have been negotiated. CFAS addressed the \$21,850 of excessive contributions from political committees by documenting untimely refunds of \$11,500.

Legal Standard

A. Authorized Committee Limits. An authorized committee may not receive more than a total of \$2,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

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Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- That the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

Facts and Analysis

A. Excessive Contributions from Individuals

The Audit staff's review of contributions made by individuals revealed that CFAS received excessive contributions totaling \$1,181,347 from 892 individuals. Of these excessive contributions, 859 totaling \$1,121,347 were excessive for the primary election and 33 totaling \$60,000 were excessive for the general election. Included in the excessive amount are refunds totaling \$12,250 that were not made in a timely manner. In most cases, CFAS either reattributed the excessive portions to the original contributors' spouses, or redesignated the excessive portions to the next election. However, for these contributions CFAS did not provide evidence of timely reattributions or redesignations; or provide evidence that the contributors were notified of any presumptive reattribution or redesignation made by CFAS. Of these excessive contributions, \$1,126,557 (95%) would have been resolved had CFAS notified contributors under the presumptive redesignations and/or reattributions rules.

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B. Excessive Contributions from Other Political Committees

The Audit staff's review of contributions from political party committees and PACs revealed that CFAS received excessive contributions totaling \$21,850 from 9 political committees. Included in the excessive amount were refunds totaling \$11,500 that were not made in a timely manner.

These matters were presented at the exit conference along with workpapers detailing the errors. The CFAS representative stated that written redesignation/retribution letters were not available, and that most of the redesignations/retributions were made over the telephone.

After the exit conference, CFAS provided a letter and copies of two solicitations with reply cards that explain that its contributors were informed on response cards and other campaign materials of the Commission's regulations and contribution limits. According to CFAS, "Given the presence of this language on the reply cards, those who contributed money in excess of the limit for the primary campaign confirmed the presumption embodied in the Commission's regulations "that a contributor of a large contribution to a primary election campaign would also support the general election campaign of the same candidate. See 67 *Fed. Reg.* 69, 928, 69,930 (Nov. 19, 2002)." CFAS further stated that the individuals identified by the Audit staff did not contribute in excess of \$4,000 to the primary and the general election campaigns. The Audit staff accepts that contributions accompanied by solicitation materials that were completed by the contributors and that clearly state the election(s) to which the contribution(s) will be applied are sufficient in demonstrating the contributors' intent. As such, these contributions were not included in the amount of excessive contributions. However, the remaining contributions were not accompanied by solicitation materials or were accompanied by solicitation materials that did not meet the requisites above. As a result, the Audit staff could not confirm the contributors' intent that their contribution be designated to multiple elections or that their contribution be attributed to another individual.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CFAS:

- Provide evidence demonstrating that the contributions were not excessive. Evidence should include documentation that was not available during the audit including copies of solicitation cards completed by the contributors at the time of their contribution and that clearly inform the contributors of the limitations; timely notifications sent to contributors eligible for presumptive redesignation and/or retribution; or, timely refunds, redesignations, or retributions made for excessive contributions (copies of the front and back of negotiated refund checks) or;
- Absent such evidence, CFAS should send notices to those contributors that were eligible for presumptive redesignation and/or retributions (\$1,126,557) to inform those contributors how the contribution was designated and/or attributed and offering the contributors the option of receiving a refund of the excessive portion. CFAS should provide evidence to the Audit staff that the notices were sent. Absent the contributor's request for a refund, these notices obviate the need to refund the contributions or make a payment to the U.S. Treasury.

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- For the remaining excessive contributions for which refunds have not been issued, CFAS must refund the excessive portion to the contributors or pay the amount to the U.S. Treasury and provide evidence of such refunds (copies of the front and back of negotiated refund checks); or
- If funds are not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds become available to make such refunds.

In response to the interim audit report recommendations, CFAS took the following actions:

First, CFAS provided adequate documentation to demonstrate some of the contributions from individuals were not excessive. As a result, the Audit staff reduced by \$128,535 the amount of excessive contributions from individuals to \$1,052,812 (\$1,181,347 - \$128,535). The Audit staff removed excessive contributions totaling \$122,285 because CFAS demonstrated that the associated solicitation materials were completed by the contributors and clearly stated the election(s) to which their contribution(s) were to be applied. The Audit staff further reduced the excessive amount by \$6,250 based on information and documentation that demonstrated the contributions were not excessive.

CFAS stated that it had provided check copies and solicitations for 106 contributors that were excessive by \$168,984. CFAS claims that these contributions were accompanied by solicitations that clearly informed the contributors of their limits and should be removed from the excessive totals. CFAS also stated that it had provided check copies and solicitations for 393 contributors that were excessive by \$453,424. CFAS provided only partial copies of these solicitations and contends the portions of the solicitations with the required language were mistakenly not copied.

After reviewing this documentation, the Audit staff found that the majority of the solicitations that CFAS provided in its response were associated with earlier contributions that were not excessive. Some of these solicitations were for contributions made years before the contributor became excessive and when different contribution limits were in effect. The Audit staff concluded these solicitations did not sufficiently demonstrate the contributors' intent at the time the excessive contributions were made. It is also noted that CFAS provided documentation for contributions that the Audit staff had previously removed from the excessive total.

In addition to the solicitations mentioned above, CFAS provided a sampling of various solicitations that it had used during the 2004 cycle. All of these solicitations contain the required language clearly stating the election(s) to which the contribution(s) should be applied. From this sampling, CFAS claims that the Audit staff should be able to infer that all contributors that signed a solicitation were fully apprised of the federal contribution limits. However, the Audit staff notes that copies of several other solicitations that were examined during the review did not appear to contain the required language. The Audit staff requested that CFAS submit complete copies of solicitations or reply cards, but CFAS responded that they had provided all they could locate.

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Second, CFAS provided evidence demonstrating that notifications for contributions eligible for presumptive reattribution/redesignation were sent to contributors. The opportunity to send such notifications was provided as a result of Commission decisions in other audits. These notifications were sent for \$895,669 of the excessive contributions that were eligible under the presumptive rules. In addition, CFAS refunded another \$12,841 of these contributions. CFAS provided evidence that \$10,591 of these refunds have been negotiated. Absent such evidence for the remaining refunds of \$2,250, the Audit staff considers this amount as unresolved.

Third, CFAS provided evidence of untimely contribution refunds for excessive contributions that were not eligible for presumptive reattribution/redesignation totaling \$13,510. CFAS provided evidence that \$11,500 of these refund checks have been negotiated. Absent such evidence for the remaining refunds of \$2,010, the Audit staff considers this amount as unresolved.

Fourth, CFAS provided evidence demonstrating that notifications were sent to political committees requesting the designation of excessive amounts to the general election. However, since presumptive rules only apply to excessive contributions from individuals, the Audit staff considers the \$21,850 from the political committees as excessive.

In summary, the Audit staff reduced the amount of excessive contributions from individuals to \$1,052,812. CFAS provided evidence that notifications of presumptive reattribution/redesignation were sent for excessive contributions totaling \$895,669 and untimely contribution refunds were issued for excessive contributions from individuals totaling \$38,601 (\$12,250 + \$12,841 + \$13,510). Refunds totaling \$4,260¹ (\$2,250 + \$2,010) have been submitted without evidence of whether they have been negotiated. For the excessive contributions totaling \$21,850 from political committees, CFAS has refunded \$11,500. The Audit staff considers the remaining excessive contributions from individuals totaling \$122,802 (\$1,052,812 - \$895,669 - \$38,601 + \$4,260) and the remaining excessive contributions from political committees totaling \$10,350 (\$21,850 - \$11,500) as unresolved.

¹ These contribution refunds will be considered as resolved if CFAS should demonstrate that the refunds have been negotiated by providing a copy of the front and back of the refund check. CFAS has indicated that it intends to issue an appropriate remittance to the United State Treasury in the event any remaining refunds checks are not deposited by contributors. Any such amounts will also be considered as resolved.